

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Request of)
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Nebraska Broadcasters Association)
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For Declaratory Ruling)
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DECLARATORY RULING

Adopted: September 22, 2006

Released: September 25, 2006

By the Assistant Chief, Policy Division, Media Bureau:

1. This refers to the request for declaratory ruling filed by the Nebraska Broadcasters Association (“NBA”), producer of two radio programs entitled “Governor Heineman’s Call-In Show” and “Senator Ben Nelson’s Call-In Show,” which air on 40 and 12 Nebraska radio stations, respectively. In its request, NBA asks the Commission to declare that these two programs are *bona fide* news interview programs and, therefore, exempt from the equal opportunities requirements of Section 315(a) of the Communications Act of 1934, as amended (the “Act”), 47 U.S.C. § 315(a).¹

2. Section 315(a) of the Act provides that, if a licensee allows a legally qualified candidate for public office to use a broadcast station, it must afford equal opportunities to other such candidates for that office. Section 315(a) also states, however, that appearances by legally qualified candidates on certain categories of *bona fide* news programming, including *bona fide* news interviews, are exempt from equal opportunities requirements. The Commission considers the following factors when determining whether a program qualifies as a “*bona fide* news interview”: (1) whether the program is regularly scheduled; (2) whether the broadcaster or an independent producer controls the program; and (3) whether the broadcaster’s or independent producer’s decisions on format, content, and participants are based on newsworthiness rather than on an intention to advance or harm an individual’s candidacy.²

3. NBA states that the subject programs satisfy the three prongs of the Commission’s *bona fide* news interview test and are, therefore, exempt from the equal opportunities requirements of Section 315(a). As to the first prong, NBA asserts that the subject programs are regularly scheduled, stating that “Governor Heineman’s Call-In Show” has aired on a monthly basis since 1984 and Senator Ben Nelson’s Call-In Show” has aired on a quarterly basis since 2005. Second, it asserts that NBA, which “exclusively” produces the programs, has complete control over the decisions on the production and

¹ See 47 C.F.R. § 73.1941.

² *In Re Request of ABC, Inc. For Declaratory Ruling*, 15 FCC Rcd 1355, 1358 (1999).

format of the programs and that neither the candidates nor their staffs have any control in the production or direction of the programs, nor do the candidates have any prior knowledge of the subjects to be discussed or the questions to be asked. Finally, it argues that the programs satisfy the third prong because “it is the producer’s intent to deliver a program that focuses on current newsworthy events and issues in Nebraska.”³

4. Based on NBA’s description, the two subject programs are similar to other programs the Commission or its staff has found to be exempt news programs.⁴ For example, in 1996, Commission staff found that a monthly radio call-in show featuring the Governor of North Carolina was an exempt news program based on the producer’s representations that: the program was regularly scheduled; the producer retained control over the program’s topics through the moderator’s participation; the spontaneous nature of the program prevented the Governor from having any control over the questions asked or topics discussed; and the program’s topics were selected based upon the caller’s interests and concerns, rather than any particular agenda of the Governor.⁵

5. We note that, whenever a news exemption is sought for an independently produced program, individual “licensees must still make a determination to air individual programs in the exercise of their *bona fide* news judgment.”⁶ Accordingly, the licensees of the stations on which the subject programs air remain ultimately responsible for a determination to air a particular program and should not do so for the political advantage of a candidate for public office.⁷

6. Based on the record before us, we conclude that the subject programs qualify for the *bona fide* news interview exemption under Section 315(a)(2) of the Act, and that appearances by candidates on these programs are exempt from the equal opportunities requirements of Section 315(a).

7. Accordingly, NBA’s request for declaratory ruling IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

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³ NBA also states that it intends for the program not to discuss politics. We note, for purposes of clarification, that a program could still be partisan and advance or harm an individual’s candidacy without any specific discussion of politics. As long as a program producer’s decisions concerning a program are based on newsworthiness, as NBA has indicated, we are satisfied that the program is not designed to promote or harm a particular candidate.

⁴ See *In Re Request of Capitol Radio Networks For Declaratory Ruling*, 11 FCC Rcd 4674 (MMB 1996) (“*Capitol*”); *Hon. Michael V. DiSalle*, 40 FCC 2d 858 (1962).

⁵ *Capitol*, 11 FCC at 4674.

⁶ *Request for Declaratory Ruling on Independently Produced News Interviews*, 7 FCC Rcd 4681, 4685 (1981).

⁷ *Id.*